Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

NUMBER 76-352

E. C. CHAPPELLE, JR.,

Appellant,

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,

Appellees,

On Appeal from the Supreme Court of the State of Louisiana

BRIEF OF APPELLEES IN OPPOSITION TO APPELLANT'S RIGHT TO APPEAL TO THE UNITED STATES SUPREME COURT

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ORTLIEB PRESS BATON ROUGE

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E. C. CHAPPELLE, JR., **Appellant** **VS.** **THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,** **Appellees**	**IN THE** **SUPREME COURT OF THE UNITED STATES** **NUMBER 76-352**

MOTION TO DISMISS APPEAL

NOW INTO COURT, through undersigned counsel, comes Defendant-Appellee, Greater Baton Rouge Airport District, who with respect moves the Court to dismiss the appeal of E. C. Chappelle, Jr. in the above captioned matter on the ground that no substantial federal question is raised in that the Constitution of the United States affords Plaintiff-Appellant no relief under the facts as alleged.

Respectfully submitted,

By:_____
Joseph F. Keogh, Parish Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, postage prepaid, a copy of the foregoing motion to counsel of record for Plaintiff-Appellee:

Herschel C. Adcock
821 Main Street
Post Office Drawer 3037
Baton Rouge, Louisiana 70821

Baton Rouge, Louisiana, this 19th day of November, 1976.

_____
Joseph F. Keogh, Parish Attorney

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ARGUMENT

May It Please The Court:

Appellant herein seeks to have this Honorable Court strike down Act 151 of 1969, of the Louisiana Legislature as being violative of the equal protection clause of the United States Constitution. As shall more perfectly appear hereafter, appellant's claim is without merit under prior decisions of this Court, and only an uncalled for and unnecessary extension of the equal protection concept would afford plaintiff any relief. Appellant's appeal thus presents no substantial federal question and should be dismissed.

Under attack by plaintiff-appellant is a requirement of said Act 151 that requires the commissioners of the Greater

Baton Rouge Airport District to own ". . . property assessed in East Baton Rouge Parish . . .". Though plaintiff cites numerous cases which can be easily distinguished on their facts and reasoning, principal reliance is placed on the case of *Turner vs. Fouche*, 396 U.S. 346, 90 S. Ct. 532 (1970).

In *Turner* this Honorable Court struck down a Georgia scheme which required ownership of **immovable** property in order to be eligible for membership on a county board of education. Such a scheme would in fact have a great potential for discriminating invalidly against individuals, in light of the realities of our present economic situation. Increased population and resultant increase in demand for residences have driven real property prices beyond the wildest imaginations of many. Even those individuals of some means often do not own real property in some areas simply because there is no suitable property available at any price!

This Honorable Court was obviously aware of these realities in acting to hold such a "free-holder" requirement invalid. There is no hint that all property qualifications are now to be viewed as inherently unjustified. The closing remarks of this Court in *Turner* are to be noted:

> **"Without excluding the possibility that other circumstances might present themselves in which a property qualification for office-holding could survive constitutional scrutiny,** we cannot say, on the record before us, that the present free-holder requirement for membership on the county board of education amounts to anything mor than invidious discrimination." (emphasis added).
>
> 90 S. Ct. at 542.

The Court in *Turner* applied only the traditional test for denial of equal protection: whether the challenged classification rests on grounds wholly irrelevant to the achievement

of a valid state objective. The "free-holder" scheme in Georgia was thus held to be wholly irrelevant in achieving any such objectives.

Surely the same cannot be said for the instant qualification requirement which is merely that a person own "property assessed" in East Baton Rouge Parish. There is no claim that the **application** of the scheme is accomplished in a way so as to make it unconstitutional. All parties, and the trial and appellate courts agreed that the term "property" denotes real or personal (movable) property and that either one would satisfy the condition of Act 151.

Appellant states in his brief (p. 12) that personal property is seldom assessed and that real property is "usually the only property appearing on the assessment rolls". In fact, as shown by the affidavit of the assessor of East Baton Rouge Parish attached hereto, personal property in the amount of ONE HUNDRED FIFTY-SEVEN MILLION, TWO HUNDRED NINETEEN THOUSAND, SIX HUNDRED FIFTY and 00/100 ($157,219,650.00) DOLLARS appears on the assessment rolls for 1976. Additionally there is ONE HUNDRED FIFTY-ONE MILLION, THREE HUNDRED FIFTY-NINE THOUSAND, ONE HUNDRED FIFTY and 00/100 ($151,359,150.00) DOLLARS of industrial area movable property assessed. (See Appendix No. 1). The above figures do not include the movable property assessed to public utilities.

One further point needs to be stressed at this juncture. The job as commissioner sought to be retained by Mr. Chappelle is a non-compensated position. There is no remuneration received for services rendered. Thus, there are only a couple of motivations for wanting to hold such a job:

1) A spirit of civic mindedness and pride in the community in which one has substantial social, personal, and property connections, and;

2) A desire to use the influence of the position to further one's own personal gain or outside business interests.

There was some testimony at the trial of this matter and at the earlier preliminary injunction hearing which indicated that Mr. Chappelle was and/or is employed by a firm(s) which does business with the Greater Baton Rouge Airport District. (See Appendix No. 2). Thus, one might question whether Mr. Chappelle's motives fall within No. 1 or No. 2 above. This matter was admittedly not fully resolved, as the trial judge cut off further inquiry into this area. (See Appendix No. 2).

The right to hold an appointive, non-remunerative public office is simply not a fundamental right, as defined by prior decisions of this Honorable Court. It would indeed seem incongruous to hold that there is a fundamental constitutional right to hold a position, the appointment and removal from which lies totally within the discretion of an appointing authority. This would be stretching the concept of equal protection beyond comprehension, and would in effect be an exercise in academics, since the power to appoint and remove would still be exercised by the autonomous decision of the appointing body.

Any law which discriminates between citizens must be judged according to the right involved and the basis or reason for discrimination. If it is a fundamental right, the governing body must show a "compelling state interest" for the discrimination. If the right involved is **not** a fundamental right, the plaintiff must show that there is **no** rational basis for the distinction.

In the instant case, it is manifest that there is a very rational basis for the distinction. The legislature has sought to insure that members of the commission would have a substantial interest in performing their duties effectively and

conscientiously. Looked at in the proper light, the restriction is not so much on one who would hold the job, but on the appointing authority, as to who they can consider. Surely it is not irrational to feel that a person whose property is to be affected along with that of his neighbors by his decisions, will make those decisions based on the good of the majority of residents. No less an authority than the reputed Son of God is reported to have said: "For where your treasure is, there will your heart be also." (Matt. 6:21).

Plaintiff cites numerous cases to show that property requirements are unconstitutional, among them *Kramer v. Union Free School District No. 15*, 394 U.S. 621, 89 Supreme Court 1886 (1969); *Cipriano v. City of Houma*, 395 U.S. 701, 89 Supreme Court 1897 (1969); and *City of Phoenix, Arizona v. Kolodziejski*, 399 U.S. 204, 90 Supreme Court 1990 (1970).

These cases involved the denial of the franchise to otherwise qualified electors. Thus, they were dealing with a fundamental right which required a showing of a "compelling state interest". The Trial Court, the Appeals Court, and apparently the Louisiana Supreme Court felt that the right to hold a non-compensated appointive office is not a fundamental right. This Court is asked by plaintiff to hold otherwise. Such a holding would be a gross distortion of equal protection and give impetus to a further unwarranted intrusion on the rights of the several states by the federal government.

Plaintiff's appeal must be dismissed for want of a substantial federal question.

Appendix No. 1

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary, personally came and appeared Frank Granger, who being first sworn by me, did depose and say:

That he is the assessor for East Baton Rouge Parish, State of Louisiana, and as such is qualified to make this affidavit;

That there is personal property assessed on the current assessment rolls in East Baton Rouge Parish in the amount(s) of ONE HUNDRED FIFTY-SEVEN MILLION, TWO HUNDRED NINETEEN THOUSAND, SIX HUNDRED FIFTY and 00/100 ($157,219,650.00) DOLLARS with additional personal propert yin the industrial area assessed at ONE HUNDRED FIFTY-ONE MILLION, THREE HUNDRED FIFTY-NINE THOUSAND, ONE HUNDRED FIFTY and 00/100 ($151,359,150.00) DOLLARS;

That the above figures do not include movable (personal) property assessed to public utilities.

/s/ Frank Granger
Frank Granger, Assessor

SWORN TO AND SUBSCRIBED before me, Notary Public, on this 18th day of November, 1976 at Baton Rouge, Louisiana.

/s/ Stephen R. Wilson
Stephen R. Wilson, Notary

Appendix No. 2

Excerpt from Trial Transcript of Suit No. 179,759, Division J 19th Judicial District Court Page 52

BY MR. FETZER:

Q Now, when you say the field of aviation, in what — that's in general terms, specifically what area are you speaking of?

A In airport management.

Q In airport management?

A Right, and also technology.

Q Would you say that being a member of the Commission fulfills that right that you might have in this field of airport management?

A If I participate in it like I should, it would.

Q And how is that?

A Well, to attend the meetings and stay current in all of the fields of aviation.

Q While you were executive director did the Airport Commission manage the airport?

A I think a better description would be they furnished overall guidelines and I administered the day to day operation of the airport.

Q You as executive director?

A Right.

Q So, being a member of the Commission wouldn't necessarily fulfill that right that you speak of as being — furthering your position of airport management?

A Well, I think the commissioner has to stay up on what goes on in aviation, both what the other directors are doing and everything to be able to furnish the proper guidelines.

Q Mr. Chappelle, where are you presently employed?

A With Hickory Construction.

Excerpt from Trial Transcript of Suit No. 179,759, Division J 19th Judicial District Court Page 56

relevancy back then, because it didn't have any effect on the judgment of the Court.

MR FETZER: The injunction was denied.

THE COURT: That's right.

MR. FETZER: I dont know what part it might' have played, Your Honor, but of course, we consider it —

THE COURT: Well, I'm of the opinion that the relevancy of that thing is practically nil, so get on to something else. Whether he's working for Hickory or not doesn't make any difference.

BY MR. FETZER:

Q Do you have any business with the Airport now in connection with Hickory?

A I don't, no.

Q Did Hickory have any business with the Airport while you you (sic) were Director?

A Yes.

Q What business was that?

A Airport lighting.

Q Airport lighting.

MR. ADCOCK: Your Honor,

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once again, I want to object. If counsel is trying to set some sort of pattern to give some basis for the removal of Mr. Keogh from this Commission then I want to object.

THE COURT: It's not Mr. Keogh, for goodness sake, Mr. Chappelle.

MR. ADCOCK: I beg your pardon, Mr. Chappelle, if in fact there was reason to remove Mr. Chappelle, then they should have followed the Plan of Government and removed him, and not gone through the procedure that they did and I want to object to anything that may be brought up in this courtroom so that I can preserve my rights in the event there is a hearing.

THE COURT: I agree with you. Didn't you say you wanted to withdraw it anyway?

MR. FETZER: Well, we will leave it in, subject to his objection.

MR. FETZER: Your Honor, that's all the questions I have at this time of Mr. Chappelle. I would like to reserve

PROOF OF SERVICE

I, Joseph F. Keogh, Attorney for the Greater Baton Rouge Airport District, et al, Appellees herein, do hereby certify that on the _____ day of November, 1976, I served a copy of the foregoing motion and brief, and its appendices on E. C. Chappelle, Jr., Appellant, by delivering the same to counsel of record, Mr. Herschel C. Adcock, 821 Main Street, Post Office Drawer 3037, Baton Rouge, Louisiana 70821.

_____

Joseph F. Keogh, Parish Attorney